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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/691,051 | 10/19/2000 | Ronald P. Lesser | P 268412 DM-3580 | 5363 |
| 909 | 7590 | 02/24/2004 | EXAMINER | |
| PILLSBURY WINTHROP, LLP | | | OROPEZA, FRANCES P | |
| P.O. BOX 10500 | | | ART UNIT | |
| MCLEAN, VA 22102 | | | PAPER NUMBER | |
| | | | 3762 | |
| DATE MAILED: 02/24/2004 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/691,051

Applicant(s)

LESSER ET AL.

Examiner

Frances P. Oropeza

Art Unit

3762

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 February 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 35-46 and 49.

Claim(s) withdrawn from consideration: 47, 48 and 50-60.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Angela D. Sykes

ANGELA D. SYKES
SUPERVISORY PATENT EXAMINER

Frances P. Oropeza
Art Unit 3762

2-19-04

Continuation of 2. NOTE:

The Applicant's amendment filed 2/9/04 has been fully considered but it is not convincing.

The Applicant added dependent claim 61 and independent claim 62, both these claims including the limitations of "performing a wavelet transform on data obtained from said monitoring to generate wavelet-transformed data, and performing a cross-correlation analysis on said wavelet-transformed data". This limitation is not previously claimed in any of claims currently being prosecuted, hence this amendment introduces new issues and requires a new search and further consideration.

The Applicant asserts the Minzuno-Matsumoto et al. article does not disclose or suggest wavelet cross-correlation analysis. The Examiner disagrees. The Minzuno-Matsumoto et al. article does disclose wavelet cross-correlation analysis. Minzuno-Matsumoto et al. teach the cross correlation analysis is performed on "wavelets" in a time series, each wavelet being a 16 Hz, 120 ms epileptiform discharge, found to be ideal for investigating the propagation of a epileptiform discharge wave component. In the wavelet cross correlation analysis, the time series of two data points are analyzed in a common window such that the data is established as wavelets and cross correlated, one time series associated with the signal being evaluated and the other time series being the reference signal (Page 274 - left column - first three paragraphs; Page 275 - Paragraph spanning the left and right columns).

In response to the Applicant's arguments that the reference fails to show certain features of the Applicant's invention, it is noted that the features upon which the Applicant relies (i.e., the cross correlation of wavelet analysis, and cross-correlation performed on wavelet coefficients that result from performing wavelet transform on the ECoG data) are not recited in the rejected claims(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The Applicant appears to argue that based on the discussion on page 273 of the Minzuno-Masumoto et al. article, the filtering of a waveform transform to focus on a 16 Hz frequency prevents the filtered waveform from being used as the basis of another analysis method such as a wavelet cross correlation analysis. The Examiner disagrees. The Examiner is unable to find in the Minzuno-Matsumoto et al. article on Page 273 discussion of any limitations on the use of the filtered, nominal 16 Hz signal.

As to submitting additional information, the Examiner regrets that the Applicants have apparently misinterpreted her comments. The Examiner does not find the record in this application insufficient. The Applicant's are welcome to submit any additional information they want considered on the record, and the Examiner will be glad to consider it.

For the reasons of record and the discussion above, the rejection of record stands.

JP
2/19/04